Supreme Court, U. S.
FILED
NOV 21 1979
MICHAEL RODAK, JR., CLERK

SUPREME COURT OF THE UNITED STATES

October Term, 1979

NO. 79-338

WILLIAM J. CASKEY,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OPINION BELOW

The opinion of the Supreme Court of South Carolina is reported in the Advance Sheets for the South Carolina Supreme Court published during the week of June 16, 1979, Opinion Number 20982.

JURISDICTION

Respondent does not question the Court's jurisdiction in this proceeding.

QUESTIONS PRESENTED

I.

Is the South Carolina Supreme Court's decision in the instant case in conflict with the decisions of the courts of appeals in cases involving solely impeaching evidence?

II.

Would the asserted after-discovered evidence result in acquittal if a new trial was had?

ARGUMENT

The State of South Carolina, in opposition to the Petition for Writ of Certiorari in this matter, respectfully submits the following:

Petitioner's submitted reasons for allowance of the Writ of Certiorari are without merit.

I.

The South Carolina Supreme Court

unquestioningly found that the asserted after-discovered evidence in the instant case was not only merely impeaching and cumulative, but also not material to Petitioner's guilt or innocence and would not have changed the result if a new trial was had.

Petitioner claims, without merit we contend, that "the South Carolina Supreme Court did not address the trial court's factual finding that Petitioner not only possibly but probably would have been acquitted at the second trial if evidence of the witness Kilgoar's hope of leniency had been disclosed in response to the request for that information." Respondent respectfully submits that this contention is patently frivolous.

In fact, the Court specifically found:

> Here, the asserted after-discovered evidence was a conversation between the solicitor and Kilgoar whereby Kilgoar was promised immunity or leniency in return for his testimony against Pender and Caskey.

The contents of the alleged conversation are practically identical to statements by the solicitor at a pre-trial conference in the Greenwood trial that his office was not pursuing the Kilgoar charge. At that time, Judge Moss found as a matter of fact that no promises of leniency had been made to Kilgoar. Moreover, the alleged after-discovered evidence was at most impeaching of Kilgoar's credibility and not material to Appellant's guilt or innocence. We conclude the lower court committed a manifest abuse of discretion amounting to an error of law in granting the motion for a new trial.

Hence, in defiance of Petitioner's contention otherwise, the South Carolina Supreme Court did in fact review the lower court's finding that this asserted after-discovered evidence would have probably changed the result if a new trial was had, finding said ruling to be a manifest abuse of discretion. Not only was said evidence merely impeaching and cumulative, these factors being inherently reflective in and

of themselves as to impact of the testimony as after-discovered evidence, but it was immaterial to the guilt or innocence of the Petitioner. By such findings, the South Carolina Supreme Court has conclusively found that said evidence would not change the result if a new trial was had.

Respondent respectfully submits that Petitioner has set forth absolutely no basis justifying allowance by this Court of a Writ of Certiorari. Hence, we respectfully submit said Petition is utterly without merit and should be dismissed.

CONCLUSION

For the foregoing reasons, Respondent respectfully submits that Petitioner's Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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